

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TAN N. TRAN, State Bar No. 197775
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6793
6 Facsimile: (213) 897-9395

7 Attorneys for Complainant

8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1D 2005 64187

12 DENNIS BIANCHI
9224 Via Colina
La Mesa, CA 91941

FIRST AMENDED ACCUSATION

13 Physical Therapist License No. PT 10168

14 Respondent.
15

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Officer of the Physical Therapy Board of California (Board).
21 2. On or about January 22, 1988, the Board issued Physical Therapist License
22 Number PT 10168 to Dennis Bianchi (Respondent). This license was in full force and effect at
23 all times relevant to the charges brought herein and expired on March 31, 2007.

24 **JURISDICTION**

- 25 3. The Board brings this Accusation under the authority of the following
26 provisions of the Business and Professions Code (Code).
27 4. Section 2660 of the Code states, in pertinent part:
28 The board may, after the conduct of appropriate proceedings under the

Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

...

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

...

“(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.”

...

“(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.”

...

5. Section 2661 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict

1 of guilty, or dismissing the accusation, information, or indictment.

2 6. Title 16, California Code of Regulations, section 1399.20 provides, in
3 pertinent part, that a crime shall be considered to be substantially related to the qualifications,
4 functions or duties of a person holding a license under the Physical Therapy Practice Act if "to a
5 substantial degree it evidences present or potential unfitness of a person to perform the functions
6 authorized by the license in a manner consistent with the public health, safety or welfare."

7 7. Section 2661.5 of the Code states:

8 (a) In any order issued in resolution of a disciplinary proceeding before
9 the board, the board may request the administrative law judge to direct any
10 licensee found guilty of unprofessional conduct to pay to the board a sum not to
11 exceed the actual and reasonable costs of the investigation and prosecution of the
12 case.

13 (b) The costs to be assessed shall be fixed by the administrative law judge
14 and shall not in any event be increased by the board. When the board does not
15 adopt a proposed decision and remands the case to an administrative law judge,
16 the administrative law judge shall not increase the amount of the assessed costs
17 specified in the proposed decision.

18 (c) When the payment directed in an order for payment of costs is not
19 made by the licensee, the board may enforce the order of payment by bringing an
20 action in any appropriate court. This right of enforcement shall be in addition to
21 any other rights the board may have as to any licensee directed to pay costs.

22 (d) In any judicial action for the recovery of costs, proof of the board's
23 decision shall be conclusive proof of the validity of the order of payment and the
24 terms for payment.

25 (e) (1) Except as provided in paragraph (2), the board shall not renew or
26 reinstate the license or approval of any person who has failed to pay all of the
27 costs ordered under this section.

28 (2) Notwithstanding paragraph (1), the board may, in its discretion,

1 conditionally renew or reinstate for a maximum of one year the license or
2 approval of any person who demonstrates financial hardship and who enters into a
3 formal agreement with the board to reimburse the board within that one year
4 period for those unpaid costs.

5 (f) All costs recovered under this section shall be deposited in the
6 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
7 costs are actually recovered or the previous fiscal year, as the board may direct.

8 8. Section 125.3 of the Code provides, in pertinent part, that the Board may
9 request the administrative law judge to direct a licentiate found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Conviction of Crime)

14 9. Respondent is subject to disciplinary action under section 2660, subsection
15 (d), and section 2661 in that he was convicted of a crime substantially related to the
16 qualifications, functions or duties of a physical therapist, to wit: vandalism. The circumstances
17 are as follows:

18 A. On or about February 25, 2002, respondent was observed using
19 bolt cutters to force entry into lockers at the 24 Hour Fitness Center in La Mesa,
20 California. Respondent cut the locks off approximately six lockers and left the
21 building. He was subsequently arrested and charged with burglary and vandalism.

22 B. On April 24, 2002, in *People v. Bianchi*, No. CE220531, the San
23 Diego Superior Court dismissed the burglary charges and respondent entered a
24 plea of guilty to vandalism, i.e., the malicious damage, defacement or destruction
25 of property valued at less than four hundred dollars (\$400.00). Respondent was
26 ordered to pay restitution of fifty-six dollars (\$56.00) to one victim and to stay
27 away from all 24 Hour Fitness Centers.

28 C. On July 2, 2005, in response to an inquiry by the Physical Therapy

1 Board, respondent admitted to having cut the locks off multiple lockers.

2 Respondent stated that the lockers were day use lockers and that his complaints to
3 24 Hour Fitness Center staff about the overnight use of these lockers were not
4 acted upon; Consequently, respondent decided to remove the locks himself.

5 Respondent denied any theft from the lockers.

6 10. Respondent's conduct, as set forth above, constitutes unprofessional
7 conduct and respondent's license is subject to discipline pursuant to the aforementioned
8 provisions of the Business and Professions Code in that respondent was convicted of a crime
9 substantially related to the qualifications, functions or duties of a physical therapist.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct for Material Breach of Order)

12 11. Respondent is subject to disciplinary action under section 2660, in that he
13 violated the Stipulated Settlement and Disciplinary Order (attached as Exhibit A to this Amended
14 Accusation and hereinafter referred to as the "Decision") which was adopted by the Board on
15 September 14, 2006, and which became effective on October 16, 2006. The circumstances are as
16 follows:

17 A. In a disciplinary action entitled "In the Matter of the Accusation
18 Against Dennis Bianchi," Case No. 1D 2005 64187, the Board issued a Decision,
19 which became effective on October 16, 2006. In this Decision, Respondent was
20 ordered to (1) pay cost recovery of \$2,500 or \$300 (if paid within ninety days of
21 the effective date of the Decision the balance would be forgiven), (2) take and
22 pass a written exam on the laws and regulations governing the practice of physical
23 therapy in California within 90 days of the effective date of the Decision, and (3)
24 enroll and participate in an approved anger management class at Respondent's
25 cost within ninety days from the effective date of the Decision, and to provide
26 documentation verifying satisfactory completion of the class.

27 B. Paragraph 5 (FAILURE TO COMPLY WITH ORDER) of the
28

1 Decision also stated:

2 “A material breach by Respondent of this order shall constitute
3 unprofessional conduct and shall be a basis for further disciplinary
4 action by the Board. In such circumstances, the Complainant
5 may reinstate the Accusation in case number 1D 2005 64187,
and file an amended accusation and/or file a supplemental
accusation alleging any material breach of this order by
Respondent as unprofessional conduct.”

6 C. To date, Respondent has failed to comply with the terms of the
7 Decision as stated in paragraphs 11A(1) through A(3) above. Respondent’s violating the terms
8 of the Decision, as set forth above, constitutes unprofessional conduct and is a material breach of
9 the order which subjects Respondent’s license to discipline.

10 **PRAYER**

11 **WHEREFORE**, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Physical Therapy Board of California issue a
13 decision:

- 14 1. Revoking or suspending Physical Therapist License Number PT 10168,
15 issued to Dennis Bianchi;
16 2. Ordering Dennis Bianchi to pay the Physical Therapy Board of California
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 2661.3;
19 3. Taking such other and further action as deemed necessary and proper.
20

21 DATED: September 6, 2007
22

23
24 Original Signed By:
25 STEVEN K. HARTZELL
26 Executive Officer
27 Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant